

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.23897 of 1997

Dated 01-03-2007

Between:

Dr. S.Upendra Rao.

..... PETITIONER

AND

University of Hyderabad rep. By its Registrar & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.23897 of 1997

ORDER:

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The letter of the Deputy Registrar of the first respondent-University dated 01-09-1997 and the resolution of the Executive Council dated 30-06-1997, whereby the petitioner was directed to pay three months emoluments constituting three months notice pay, is under challenge in this writ petition, as arbitrary and illegal.

The petitioner joined the first respondent-University as Director (Computer Centre) on 30-01-1992. He was placed under probation for a period of two years, which was extended by one year in May, 1994. The petitioner sought employment with the State Bank of India on 01-10-1996 and informed the Registrar of the respondent University that he was prepared to go on extraordinary leave. Petitioner further informed that, as per the resolution of the Executive Council in E.C.104/96/10, the first respondent-University had resolved to adopt Government of India rules regarding lien and that he be given lien according to the rules. While informing the Registrar that his appointment with the State Bank of India was contractual in nature, the petitioner sought permission to go on lien for a period of two years. He also informed the Registrar that he was likely to join the State Bank of India in the middle of July, 1997. On 13-06-1997, while referring to his earlier letter dated 13-05-1997, the petitioner informed the Vice-Chancellor that if it was not possible to sanction extraordinary leave as requested by him in his letter dated 13-05-1997, his request be treated as his resignation since he had informed the first respondent-University in his letter dated 06-04-1997 that his notice period for resignation be waived. The petitioner also

requested that he be relieved on 01-07-1997 to enable him to join on 02-07-1997. In reply thereto, the petitioner was informed by the Registrar of the first respondent-University, vide letter dated 21-06-1997, that the Vice-Chancellor did not agree to his request for sanction of one year extraordinary leave owing to exigencies of work and that the Vice-Chancellor had accepted his resignation with effect from 01-07-1997 so as to enable him to join State Bank of India. The petitioner was requested to submit 'No Due Certificate' and handover charge so as to enable the office to relieve him on 01-07-1997. The Executive Council met on 30-06-1997 and 01-07-1997 and since its meeting was still in progress, the petitioner was issued letter dated 01-07-1997 informing him that he was being relieved subject to the decision of the Executive Council on waiver of the notice period of resignation. The Executive Council refused to waive the notice period. The resolution of the Executive Council dated 30-06-1997/01-07-1997 was communicated to the petitioner later.

Sri P.V.L.Bhanu Prakash, learned counsel for the petitioner, would submit that several others had been extended the benefit of waiver of the notice period, that the petitioner was discriminated against and it was only in his case was the Executive Council insisting on payment of three months salary in lieu of notice. Learned counsel would further contend that since the petitioner had sought for lien, vide letter dated 13-05-1997, and inasmuch as the University was well aware that he intended to join the State Bank of India on 02-07-1997, it must be held that he had put the first respondent-University on notice of his intention to leave the organization from that date, in which event, he would, at best, be required only to pay salary for the balance period after treating the period from 13-05-1997 till 01-07-1997 as his having served the first respondent-

University during the notice period.

Sri V.R.M.Prasanth, learned standing counsel appearing on behalf of the first respondent-University, would place reliance on Rule 15 of the University of Hyderabad (Terms and Conditions of Service) Rules, ('for short 'the Rules') which reads as under:

15. Resignation:

Subject to the acceptance of resignation by the Competent Authority a permanent/temporary employee may, by notice of three months'/one months' as the case may be in writing addressed to the appointing authority resign from the service of the University, or by payment of salary in lieu thereof:

Provided that the appointing authority may if it deems proper in any case permit a permanent/temporary employee to resign from service on notice of less than three months/ one month.

Learned standing counsel would contend that, since the competent authority to accept the resignation of the petitioner was only the Executive Council and Rule 19 of the Rules conferred power only on the Executive Council to waive the notice period, no reliance could be placed on the letter dated 21-06-1997, whereunder the Vice-Chancellor is said to have agreed to the petitioner's request that he be relieved from 01-07-1997. Learned standing counsel would also refer to the letter issued by the Registrar dated 01-07-1997, wherein the petitioner was informed that he was being relieved subject to the decision of the Executive Council on waiver of the notice period. According to the learned standing counsel, since the petitioner was informed of the fact that waiver of the notice period was under consideration by the Executive Council, it was not open for him to presume that the first respondent-University would waive the notice period and, in case, he was not inclined to leave the services of the organization if the notice period was not waived, nothing prevented the petitioner from continuing in the services of the first-respondent-

University till completion of the notice period of three months.

It is not in dispute that the Executive Council is the competent authority to accept the resignation submitted by the petitioner and it is the Executive Council alone which has the power to take a decision as to whether the notice period can be waived or not. Reliance placed by

Sri P.V.L.Bhanu Prakash, learned counsel for the petitioner, on the letter dated 21-06-1997, which merely refers to the approval of the Vice-Chancellor and not that of the Executive Council, is therefore misplaced since it is the Executive Council, which is the competent authority to take a decision in accordance with Rule 15 of the Rules. Since the Executive Council decided not to waive the notice period and to insist on payment of three months salary in lieu thereof, the action of the respondents in insisting on payment of this amount cannot be faulted. The plea of discrimination must also fail. Rule 15 of the Rules confers power on the Executive Council either to insist on the officer concerned serving the organization for a period of three months or to pay three months salary in lieu thereof. The power to waive or reduce the period is conferred only on the Executive Council. In the absence of others, similarly circumstanced, being arrayed as respondents in the writ petition, it is neither desirable nor is it necessary for this Court to examine this plea of discrimination. The impugned resolution of the Executive Council does not necessitate interference in proceedings under Article 226 of the Constitution of India.

Sri P.V.L.Bhanu Prakash, learned counsel for the petitioner, would submit that since the petitioner had put the first respondent-University on notice in his letter dated 13-05-1997 of his intention to join State Bank of India in July, 1997, the notice period must be held to have commenced from 13-05-1997,

in which event, the period which he served the first respondent-University from 13-05-1997 till 30-06-1997 should be reckoned while determining the quantum which the petitioner is required to pay as notice pay consequent upon his resignation being accepted. While this submission cannot be said to be without merit, it must also be taken note of that this contention has been raised for the first time during the course of hearing of the writ petition, I consider it wholly inappropriate to adjudicate this question, since it is for the Executive Council, which is the competent authority, to first take a decision in this regard.

Ends of justice would be met if the petitioner is permitted to submit a representation to the limited extent of his plea that the notice period must be held to have commenced from 13-05-1997 when he had put the first respondent-University on notice of his intention of joining State Bank of India in July, 1997 and the Executive Council of the first respondent-University is directed to consider the same and pass appropriate orders thereupon in accordance with law.

Sri P.V.L.Bhanu Prakash, learned counsel for the petitioner, would submit that the petitioner would make such representation within a period of three weeks from the date of receipt of a copy of this order. The Registrar of the first respondent-University is directed to place the representation submitted by the petitioner in the next meeting of the Executive Council held after receipt of the representation and communicate the decision of the Executive Council within two weeks of a decision being taken in this regard by the Executive Council.

The Writ Petition is disposed of accordingly. No order as to costs.

01-03-2007

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